

AMENDED IN ASSEMBLY JUNE 22, 2006

AMENDED IN SENATE APRIL 17, 2006

SENATE BILL

No. 1796

Introduced by Senator Florez

February 24, 2006

~~An act to amend Sections 8521, 8550, 8551, 8552, 8554, 8575, 12878, and 12878.1 of, to amend the heading of Part 4 (commencing with Section 8520) of Division 5 of, to add Sections 8523, 8577, 8578, 8614.5, and 8614.6 to, and~~ *An act to amend Section 11564 of the Government Code, and to amend Sections 8521, 8550, 8551, 8552, 8554, 8575, and 8590 of, to amend the heading of Part 4 (commencing with Section 8520) of Division 5 of, to add Sections 8522.3, 8522.5, 8523, 8577, 8578, and 8610.5 to, to add Article 8 (commencing with Section 8725) to Chapter 3 of Part 4 of Division 5 of, and to repeal and add Article 2 (commencing with Section 8580) to Chapter 2 of Part 4 of Division 5 of, the Water Code, relating to water.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1796, as amended, Florez. ~~Reclamation Board~~ *Flood protection.*

(1) Existing law establishes the 7-member Reclamation Board in the Department of Water Resources. Existing law requires the board members to be appointed and to serve at the pleasure of the Governor. Existing law prescribes compensation for each board member for time spent attending meetings of the board in the amount of \$100, except as specified. Existing law requires the board to elect one of its members as president. Existing law requires the board to appoint a secretary, who may be a board member, and authorizes the board to appoint a general manager, a chief engineer, and an assistant secretary. Existing law authorizes the board to employ certain other employees.

This bill would rename the Reclamation Board the Central Valley Flood Protection Board. The bill would ~~declare that the board is a state agency that is separate from the department and would require the board to function~~ *act* independently of the department. *The bill would prohibit the department from overturning any action or decision by the board.*

The board would require the board to consist of 9 members. The bill would require 7 members to be appointed by the Governor, subject to Senate confirmation, 4 of whom would be required to meet specified eligibility requirements and 3 of whom would be designated as public members. The bill would require one board member to be appointed by the Senate Rules Committee and one board member to be appointed by the Speaker of the Assembly and would designate those 2 members as public members. The bill, with a certain exception, would require the board members to serve 4-year terms. The bill would require the board members to receive a salary identical to that received by members of the State Air Resources Board. The bill would require the Governor to select one of the board members as president.

The bill would repeal provisions relating to the appointment or employment of specified personnel and, instead, authorize the board to appoint an executive officer *and chief engineer* and to employ legal counsel and other necessary staff.

(2) Existing law provides that a member of the board having an interest in lands within the drainage district is not disqualified from voting to execute any part of the plans of flood control or from carrying out the objects of the board.

This bill would instead require that a member of the board having an interest in lands within the drainage district, recuse himself or herself from voting to execute those parts of the plans of flood control that would affect those lands. The bill would subject the board members to specified requirements relating to conflict of interest and ex parte communications.

(3) Existing law authorizes the board to engage in various flood control activities along the Sacramento River, San Joaquin River, their tributaries, and related areas.

This bill would *prohibit a board member from advocating to a federal agency on behalf of a project that has been or is reasonably anticipated to be submitted to the board for review unless the board authorizes that action in accordance with specified requirements. The*

bill would require the board to adopt regulations relating to evidentiary hearings and to hold evidentiary hearings to determine certain matters. The bill would require the board to take action only after allowing public comment and to consider, as applicable, specified matters for the purpose of taking that action. The bill would authorize the board to collaborate with state and federal agencies, if appropriate, regarding certain multiobjective flood management strategies.

The bill would require the ~~board~~ department to prepare a preliminary report to the Governor and Legislature, by December 31, 2008, on the status of the ~~state flood control system~~ State Plan of Flood Control and to submit the report to the board. The bill would require the department to inspect the project levees, as defined, and to include certain components in the preliminary report. The bill would require the board, by December 31, 2009, to conduct at least 2 public meetings to consider public comments prior to finalizing the report, and would require the department to assist the board in developing the necessary information for the report adopt and submit to the Governor and the Legislature a final report in accordance with prescribed procedures.~~The~~

The bill would require the board, on or before ~~January 1~~ December 31, 2009, to prepare and adopt a strategic flood control protection plan. The bill would require the board to establish and update, every 5 years, standards for levee construction, operation, and maintenance. The bill would require the board to review local and regional land use plans to ensure their compliance with flood protection and public safety standards adopted by the board. The bill would require the board to review and revise, as necessary, and authorize the board to make recommendations regarding, flood control plans adopted by local public agencies. By establishing requirements on local public agencies in connection with flood control plans, the bill would impose a state-mandated local program. The bill would prohibit the board from allocating any funds to a local public agency for a flood control project unless the board determines that project ensures adequate flood protection consistent with existing law.

~~(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

The bill would establish procedures for the decertification of locally maintained flood control facilities as a part of the State Plan of Flood Control.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~yes~~-no.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 11564 of the Government Code is*
2 *amended to read:*

3 11564. (a) Effective January 1, 1988, an annual salary of
4 twenty-five thousand one hundred eighteen dollars (\$25,118)
5 shall be paid to each member of the State Air Resources Board
6 *and the Central Valley Flood Protection Board, provided if each*
7 member devotes a minimum of 60 hours per month to state board
8 work. The salary shall be reduced proportionately if less than 60
9 hours per month is devoted to state board work.

10 (b) The annual compensation provided by this section shall be
11 increased in any fiscal year in which a general salary increase is
12 provided for state employees. The amount of the increase
13 provided by this section shall be comparable to, but shall not
14 exceed, the percentage of the general salary increases provided
15 for state employees during that fiscal year.

16 ~~SECTION 1.~~

17 *SEC. 2. The heading of Part 4 (commencing with Section*
18 *8520) of Division 5 of the Water Code is amended to read:*

19

20 PART 4. THE CENTRAL VALLEY FLOOD PROTECTION
21 BOARD

22

23 ~~SEC. 2.~~

24 *SEC. 3. Section 8521 of the Water Code is amended to read:*

25 8521. “Board” means the Central Valley Flood Protection
26 Board. Any reference to the Reclamation Board in this or any
27 other code means the Central Valley Flood Protection Board.

28 *SEC. 4. Section 8522.3 is added to the Water Code, to read:*

1 8522.3. *“Facilities of the State Plan of Flood Control”*
2 *means the levees, weirs, channels, and other features of the State*
3 *Plan of Flood Control.*

4 SEC. 5. Section 8522.5 is added to the Water Code, to read:

5 8522.5. *“Project levee” means any levee that is a part of the*
6 *facilities of the State Plan of Flood Control.*

7 ~~SEC. 3.~~

8 SEC. 6. Section 8523 is added to the Water Code, to read:

9 8523. *“State Plan of Flood Control” means the state and*
10 *federal flood control works, lands, programs, plans, policies,*
11 *conditions, and mode of maintenance and operations of the*
12 *Sacramento River Flood Control Project described in Section*
13 *8350, and of flood control projects in the Sacramento River and*
14 *San Joaquin River watersheds authorized pursuant to Article 2*
15 *(commencing with Section 12648) of Chapter 2 of Part 6 of*
16 *Division 6 for which the board or the department has provided*
17 ~~*the nonfederal assurances to the United States; assurances of*~~
18 ~~*nonfederal cooperation to the United States, and those facilities*~~
19 ~~*identified in Section 8361.*~~

20 ~~SEC. 4.~~

21 SEC. 7. Section 8550 of the Water Code is amended to read:

22 8550. (a) The board is continued in existence and shall
23 continue to exercise and have all of its powers, duties, purposes,
24 responsibilities, and jurisdiction.

25 (b) Notwithstanding any other provision of law, the board ~~is a~~
26 ~~state agency that is separate from, and shall function~~
27 ~~independently of, the department.~~ *shall act independently of the*
28 ~~department. The department shall not overturn any action or~~
29 ~~decision by the board.~~

30 ~~SEC. 5.~~

31 SEC. 8. Section 8551 of the Water Code is amended to read:

32 8551. (a) Except as provided in subdivision (g), the board
33 consists of nine members who shall be appointed in accordance
34 with this section.

35 (b) (1) Seven members of the board shall be appointed by ~~and~~
36 ~~serve at the pleasure of~~ the Governor, subject to Senate
37 confirmation.

38 (2) Of the members appointed pursuant to paragraph (1), the
39 following requirements apply:

40 (A) One person shall be an engineer.

1 (B) One person shall ~~be a hydrogeologist~~ *have training,*
2 *experience, and expertise in geology or hydrology.*

3 (C) One person shall be a flood control expert with not less
4 than ~~five years~~ *years'* experience.

5 (D) One person shall be an attorney with water experience.

6 (E) Three persons shall be public members.

7 (c) One member of the board shall be appointed by the Senate
8 Rules Committee.

9 (d) One member of the board shall be appointed by the
10 Speaker of the Assembly.

11 ~~(e) The member appointed pursuant to subdivision (c) or (d)~~
12 ~~shall be a public member.~~

13 *(e) The members appointed pursuant to subdivisions (c) and*
14 *(d) shall be public members.*

15 (f) (1) Except as provided in paragraph (2), the board
16 members appointed pursuant to subdivision (b), (c), or (d) shall
17 serve four-year terms.

18 (2) The board members initially appointed pursuant to this
19 section shall determine, by lot, that five members shall serve
20 four-year terms and four members shall serve two-year terms.

21 (g) Each board member holding office on December 31, 2006,
22 shall continue to serve until his or her successor is appointed and
23 has been qualified to hold office. The order of replacement shall
24 be determined by lot.

25 ~~SEC. 6.~~

26 *SEC. 9.* Section 8552 of the Water Code is amended to read:

27 8552. (a) Each member of the board shall receive the
28 necessary expenses incurred by the member in the performance
29 of official duties.

30 (b) Any member of the board traveling outside the state
31 pursuant to authorization of the board, and the approval of the
32 Governor and Director of Finance as provided by Section 11032
33 of the Government Code, while so engaged shall receive per
34 diem and his or her necessary expenses.

35 (c) Each member of the board shall receive the salary provided
36 for in Section 11564 of the Government Code.

37 ~~SEC. 7.~~

38 *SEC. 10.* Section 8554 of the Water Code is amended to read:

39 8554. The Governor shall select one of the members of the
40 board as president.

1 ~~SEC. 8. Section 8577 is added to the Water Code, to read:~~

2 ~~8577. (a) No member of the board shall participate in any~~
3 ~~board action or attempt to influence any decision or~~
4 ~~recommendation by any employee of or consultant to the board~~
5 ~~that involves himself or herself or that involves any entity with~~
6 ~~which the member is connected as a director, officer, consultant,~~
7 ~~or full- or part-time employee, or in which the member has a~~
8 ~~direct personal financial interest within the meaning of Section~~
9 ~~87100 of the Government Code.~~

10 ~~(b) No board member shall participate in any proceeding~~
11 ~~before any agency as a consultant or in any other capacity on~~
12 ~~behalf any person of that actively participates in matters before~~
13 ~~the board.~~

14 ~~(c) For a period of 12 months after leaving office, a former~~
15 ~~board member shall not act as agent or attorney for, or otherwise~~
16 ~~represent, any other person before the board by making any~~
17 ~~formal or informal appearance or by making any oral or written~~
18 ~~communication to the board.~~

19 ~~SEC. 9.~~

20 ~~SEC. 11. Section 8575 of the Water Code is amended to read:~~

21 ~~8575. A member of the board having an interest in lands~~
22 ~~within the drainage district shall recuse himself or herself from~~
23 ~~voting to execute those parts of the plans of flood control that~~
24 ~~would affect those lands.~~

25 ~~SEC. 12. Section 8577 is added to the Water Code, to read:~~

26 ~~8577. (a) No board member shall participate in any board~~
27 ~~action or attempt to influence any decision or recommendation~~
28 ~~by any employee of, or consultant to, the board that involves~~
29 ~~himself or herself or that involves any entity with which the~~
30 ~~member is connected as a director, officer, consultant, or full- or~~
31 ~~part-time employee, or in which the member has a direct~~
32 ~~personal financial interest within the meaning of Section 87100~~
33 ~~of the Government Code.~~

34 ~~(b) No board member shall participate in any proceeding~~
35 ~~before any agency as a consultant or in any other capacity on~~
36 ~~behalf of any person that actively participates in matters before~~
37 ~~the board.~~

38 ~~(c) For a period of 12 months after leaving office, a former~~
39 ~~board member shall not act as agent or attorney for, or~~
40 ~~otherwise represent, any other person before the board by~~

1 *making any formal or informal appearance or by making any*
2 *oral or written communication to the board.*

3 *(d) No board member may advocate to the United States Army*
4 *Corps of Engineers or other federal agency on behalf of any*
5 *project that has been or is reasonably anticipated to be submitted*
6 *to the board for review, unless the board authorizes that action*
7 *in accordance with Section 8560.*

8 ~~SEC. 10.~~

9 *SEC. 13.* Section 8578 is added to the Water Code, to read:

10 8578. (a) For the purposes of this section, “ex parte
11 communication” means any oral or written communication
12 concerning matters, other than purely procedural matters, under
13 the board’s jurisdiction that are subject to a vote.

14 (b) (1) No board member or any person, excluding a staff
15 member of the board acting in his or her official capacity, who
16 intends to influence the decision of a board member on a matter
17 before the board, shall conduct an ex parte communication.

18 (2) If an ex parte communication occurs, the board member
19 shall notify the interested party that a full disclosure of the ex
20 parte communication shall be entered in the board’s record.

21 (3) Communications cease to be ex parte communications
22 when either of the following occurs:

23 (A) The board member or the person who engaged in the
24 communication with the board member fully discloses the
25 communication and requests in writing that it be placed in the
26 board’s official record of the proceeding.

27 (B) When two or more board members receive substantially
28 the same written communication, or are party to the same oral
29 communication, from the same party on the same matter, and a
30 single board member fully discloses the communication on
31 behalf of the other board member or members who received the
32 communication and requests in writing that it be placed in the
33 board’s official record of the proceeding.

34 (c) Notwithstanding Section 11425.10 of the Government
35 Code, the ex parte communications provisions of the
36 Administrative Procedure Act (Article 7 (commencing with
37 Section 11430.10) of Chapter 4.5 of Part 1 of Division 3 of Title
38 2 of the Government Code) do not apply to proceedings of the
39 board to which this section applies.

~~SEC. 11.~~

~~SEC. 14.~~ Article 2 (commencing with Section 8580) of Chapter 2 of Part 4 of Division 5 of the Water Code is repealed.

~~SEC. 12.~~

~~SEC. 15.~~ Article 2 (commencing with Section 8580) is added to Chapter 2 of Part 4 of Division 5 of the Water Code, to read:

Article 2. Employees

8580. (a) The board may appoint an executive officer.

~~(b) The board may appoint a chief engineer.~~

~~(b)~~

~~(c) The board may employ legal counsel and other necessary staff.~~

~~SEC. 13.~~ Section 8614.5 is added to the Water Code, to read:

~~8614.5. (a) On or before January 1, 2009, the board shall prepare and adopt a strategic flood control plan pursuant to Section 8614.6. The board shall make relevant maps available to the public and shall post these maps on its Internet Web site.~~

~~(b) The board shall establish and update, at a minimum, every five years, standards for levee construction, operation, and maintenance.~~

~~(c) The board shall review local and regional land use plans to ensure their compliance with flood protection and public safety standards adopted by the board.~~

~~(d) The board shall review flood control plans adopted by local public agencies to ensure that those plans adequately protect public safety. The board shall revise those plans to ensure adequate flood protection if the board determines that the plans are insufficient for flood protection purposes.~~

~~(e) The board shall not allocate any funds to a local public agency for a flood control project unless the board determines that project ensures adequate flood protection.~~

~~SEC. 14.~~ Section 8614.6 is added to the Water Code, to read:

~~8614.6. (a) By December 31, 2008, the board shall prepare a report to the Governor and Legislature on the status of the state flood control system. For the purposes of preparing the report, the board shall inspect the project levees and review available information on all of the following:~~

1 ~~(1) A description and the location of all facilities of the State~~
2 ~~Plan of Flood Control, including, but not limited to, levees,~~
3 ~~canals, weirs, bypasses, and pumps.~~

4 ~~(2) An evaluation of the performance and deficiencies of~~
5 ~~project levees and other facilities of the State Plan of Flood~~
6 ~~Control.~~

7 ~~(3) A prioritized list of actions necessary to improve the~~
8 ~~performance of, and to the maximum extent practicable, to~~
9 ~~eliminate deficiencies of, project levees and other facilities of the~~
10 ~~State Plan of Flood Control, using the following criteria for~~
11 ~~establishing its priority list:~~

12 ~~(A) The likelihood of failure by the levee or facility.~~

13 ~~(B) The current population protected by the levee or facility.~~

14 ~~(C) The public safety infrastructure protected by the levee or~~
15 ~~facility. For purposes of this subparagraph, “public safety~~
16 ~~infrastructure” means the street and highway evacuation routes,~~
17 ~~hospitals, and other public safety infrastructure necessary to~~
18 ~~respond to a flood emergency.~~

19 ~~(4) The board shall consider both structural and nonstructural~~
20 ~~methods for improving the performance and eliminating~~
21 ~~deficiencies of project levees and other facilities of the State Plan~~
22 ~~of Flood Control and wherever feasible, the board shall include~~
23 ~~actions intended to meet multiple objectives, including each of~~
24 ~~the following:~~

25 ~~(A) Reducing the risk to human life, health, and safety from~~
26 ~~flooding.~~

27 ~~(B) Promoting natural dynamic hydrologic and geomorphic~~
28 ~~processes.~~

29 ~~(C) Reducing damages from flooding.~~

30 ~~(D) Increasing and improving the quantity, diversity, and~~
31 ~~connectivity of riparian, wetland, floodplain, and shaded riverine~~
32 ~~aquatic habitats, including agriculture and the ecological values~~
33 ~~of these lands.~~

34 ~~(E) Minimizing the flood management system operation and~~
35 ~~maintenance requirements.~~

36 ~~(F) Promoting the recovery and stability of native species~~
37 ~~populations and overall biotic community diversity.~~

38 ~~(b) The department shall assist the board in developing the~~
39 ~~necessary information for the report.~~

1 ~~(e) (1) The board shall conduct at least two public meetings to~~
2 ~~consider public comments prior to finalizing the report. At least~~
3 ~~one meeting shall be conducted at a location in the Sacramento~~
4 ~~Valley and at least one meeting shall be conducted at a location~~
5 ~~in the San Joaquin Valley or the Sacramento-San Joaquin Delta~~
6 ~~as described in Section 12220.~~

7 ~~(2) The board shall publish the draft report on its Internet Web~~
8 ~~site at least 30 days before the public meetings.~~

9 ~~(3) To the extent feasible, the board shall provide outreach to~~
10 ~~disadvantaged communities to promote access and participation~~
11 ~~in the meetings.~~

12 ~~(d) By December 31, 2007, the board shall provide a report to~~
13 ~~the Governor and Legislature on its progress toward meeting the~~
14 ~~requirements of subdivision (a).~~

15 ~~(e) It is the intent of the Legislature that the report to the~~
16 ~~Governor and Legislature on the status of the state flood control~~
17 ~~system become the basis for developing and implementing one or~~
18 ~~more Natural Communities Conservation Plans or joint Natural~~
19 ~~Communities Conservation Plan/Habitat Conservation Plans for~~
20 ~~flood management projects.~~

21 ~~SEC. 15. Section 12878 of the Water Code is amended to~~
22 ~~read:~~

23 ~~12878. Unless the context otherwise requires, the following~~
24 ~~definitions apply throughout this chapter:~~

25 ~~(a) "Department" means Department of Water Resources.~~

26 ~~(b) "Director" means the Director of Water Resources.~~

27 ~~(c) "Board" means the Central Valley Flood Protection Board.~~

28 ~~(d) Wherever the words "board or department" or "board or~~
29 ~~director" are used together in this chapter they shall mean board~~
30 ~~as to any project in the Sacramento or San Joaquin Valleys or on~~
31 ~~or near the Sacramento River or the San Joaquin River or any of~~
32 ~~their tributaries, and department or director as to any project in~~
33 ~~any other part of the state outside of the jurisdiction of the board.~~

34 ~~(e) "Project" means any project that has been authorized~~
35 ~~pursuant to Chapter 2 (commencing with Section 12639) or~~
36 ~~Chapter 4 (commencing with Section 12850) and concerning~~
37 ~~which assurances have been given to the Secretary of the Army~~
38 ~~or the Secretary of Agriculture that the state or a political~~
39 ~~subdivision thereof will operate and maintain the project works~~
40 ~~in accordance with regulations prescribed by the federal~~

1 ~~government or any project upon which assurances have been~~
2 ~~given to the Secretary of the Army and upon which the Corps of~~
3 ~~Engineers, United States Army, has performed work pursuant to~~
4 ~~Section 208 of Public Law 780, 83rd Congress, 2nd Session,~~
5 ~~approved September 3, 1954.~~

6 ~~(f) “Maintenance” means work described as maintenance by~~
7 ~~the federal regulations issued by the Secretary of the Army or the~~
8 ~~Secretary of Agriculture for any project.~~

9 ~~(g) “Maintenance area” means described or delineated lands~~
10 ~~that are found by the board or department to be benefitted by the~~
11 ~~maintenance and operation of a particular unit of a project.~~

12 ~~(h) “Unit” means any portion of the works of a project~~
13 ~~designated as a unit by the board or department, other than the~~
14 ~~works prescribed in Section 8361, or works operated and~~
15 ~~maintained by the United States.~~

16 ~~(i) “Land” includes improvements.~~

17 ~~(j) “Local agency” means and includes all districts or other~~
18 ~~public agencies responsible for the operation of works of any~~
19 ~~project under Section 8370, Chapter 2 (commencing with Section~~
20 ~~12639) or Chapter 4 (commencing with Section 12850) or any~~
21 ~~other law of this state.~~

22 ~~(k) “Cost of operation and maintenance” means, for the~~
23 ~~purposes of maintenance areas established after July 31, 2004, as~~
24 ~~the result of relinquishment by a local agency pursuant to Section~~
25 ~~12878.1 only, the cost of all maintenance, as defined in~~
26 ~~subdivision (f), and shall also include, but is not limited to, all of~~
27 ~~the following costs:~~

28 ~~(1) All costs incurred by the department or the board in the~~
29 ~~formation of the maintenance area under this chapter.~~

30 ~~(2) Any costs, if deemed appropriate by the department, to~~
31 ~~secure insurance covering liability to others for damages arising~~
32 ~~from the maintenance activities of the department or from~~
33 ~~flooding in the maintenance area.~~

34 ~~(3) Any costs of defending any action brought against the~~
35 ~~state, the department, or the board, or any employees of these~~
36 ~~entities, for damages arising from the maintenance activities of~~
37 ~~the department or from flooding in the maintenance area.~~

38 ~~(4) Any costs incurred in the payment of any judgment or~~
39 ~~settlement of an action against the state, the department, or the~~
40 ~~board, or any employees of these entities, for damages arising~~

1 ~~from the formation of the maintenance area or from any~~
2 ~~maintenance activities of the department or flooding in the~~
3 ~~maintenance area.~~

4 SEC. 16. Section 12878.1 of the Water Code is amended to
5 read:

6 ~~12878.1. (a) Whenever the board or department finds that a~~
7 ~~unit of a project is not being operated or maintained in~~
8 ~~accordance with the standards established by federal regulations~~
9 ~~or whenever the governing body of a local agency obligated to~~
10 ~~operate and maintain that unit by resolution duly adopted and~~
11 ~~filed with the department declares that it no longer desires to~~
12 ~~operate and maintain the unit, the department shall prepare a~~
13 ~~statement to that effect specifying in detail the particular items of~~
14 ~~work necessary to be done in order to comply with the standards~~
15 ~~of the federal government together with an estimate of the cost~~
16 ~~thereof for the current fiscal year and for the ensuing fiscal year.~~

17 ~~(b) Subject to subdivision (c), but notwithstanding any other~~
18 ~~provision of law, the board or the department is not required to~~
19 ~~proceed in accordance with subdivision (a) or with the formation~~
20 ~~of a maintenance area under this chapter if neither the board nor~~
21 ~~the department has given the nonfederal assurances to the United~~
22 ~~States required for the project. If neither the board nor the~~
23 ~~department has given the nonfederal assurances to the United~~
24 ~~States required for the project, the board or department may elect~~
25 ~~to proceed with the formation if it determines that the formation~~
26 ~~of a maintenance area is in the best interest of the state.~~

27 ~~(c) (1) Subdivision (b) does not apply to any project for which~~
28 ~~an application for the formation of a maintenance area under this~~
29 ~~chapter has been submitted to the department by a local agency~~
30 ~~on or before July 1, 2003.~~

31 ~~(2) Subject to paragraph (3), the department or the board shall~~
32 ~~proceed in accordance with subdivision (a) and with the~~
33 ~~formation of a maintenance area in accordance with this chapter~~
34 ~~for any project described in paragraph (1).~~

35 ~~(3) Before the department or the board forms a maintenance~~
36 ~~area pursuant to this subdivision, the local agency shall enter into~~
37 ~~an agreement with the department pursuant to which the local~~
38 ~~agency agrees to indemnify and hold and save harmless the state,~~
39 ~~its officers, agents, and employees for any and all liability for~~
40 ~~damages that may arise out of the planning, design, construction,~~

1 operation, maintenance, repair, or rehabilitation of the project, or
2 the dissolution or modification of the maintenance area formed
3 pursuant to this subdivision.

4 ~~SEC. 17. If the Commission on State Mandates determines~~
5 ~~that this act contains costs mandated by the state, reimbursement~~
6 ~~to local agencies and school districts for those costs shall be~~
7 ~~made pursuant to Part 7 (commencing with Section 17500) of~~
8 ~~Division 4 of Title 2 of the Government Code.~~

9 *SEC. 16. Section 8590 of the Water Code is amended to read:*
10 *8590. To carry out the primary state interest described in*
11 *Section 8532, the board may do any of the following:*

12 (a) Acquire either within or ~~without~~ *outside* the boundaries of
13 the drainage district, by purchase, condemnation or by other
14 lawful means in the name of the drainage district, all lands,
15 rights-of-way, easements, property or material necessary or
16 requisite for the purpose of bypasses, weirs, cuts, canals, sumps,
17 levees, overflow channels and basins, reservoirs and other flood
18 control works, and other necessary purposes, including drainage
19 purposes.

20 (b) Construct, clear, and maintain bypasses, levees, canals,
21 sumps, overflow channels and basins, reservoirs and other flood
22 control works.

23 (c) Construct, maintain, and operate ditches, canals, pumping
24 plants, and other drainage works.

25 (d) Make contracts in the name of the drainage district to
26 indemnify or compensate any owner of land or other property for
27 any injury or damage caused by the exercise of the powers
28 conferred by this division, or arising out of the use, taking, or
29 damage of any property for any of the purposes of this division.

30 (e) *Collaborate with state and federal agencies, if appropriate,*
31 *regarding multiobjective flood management strategies that*
32 *incorporate agricultural conservation, ecosystem protection and*
33 *restoration, or recreational components.*

34 *SEC. 17. Section 8610.5 is added to the Water Code, to read:*

35 *8610.5. (a) (1) The board shall adopt regulations relating to*
36 *evidentiary hearings pursuant to Chapter 4.5 (commencing with*
37 *Section 11400) of Part 1 of Division 3 of Title 2 of the*
38 *Government Code.*

39 *(2) The board shall hold an evidentiary hearing for a*
40 *determination that relates to either of the following:*

1 (A) *The issuance of a permit pursuant to this part.*

2 (B) *Except as provided in paragraph (3), a request for*
3 *exceptions from board policy developed pursuant to this part.*

4 (3) *The board is not required to hold an evidentiary hearing*
5 *before making a decision relating to general flood protection*
6 *policy or planning.*

7 (b) *The board may take an action pursuant to Section 8560*
8 *only after allowing for public comment.*

9 (c) *The board shall consider all of the following, as*
10 *applicable, for the purpose of taking any action pursuant to*
11 *Section 8560:*

12 (1) *Evidence that the board admits into its record from any*
13 *party, state or local public agency, or nongovernmental*
14 *organization with expertise in flood or floodplain management.*

15 (2) *The best available science that relates to the scientific*
16 *issues presented by the executive officer, legal counsel, the*
17 *department, or other parties that raise credible scientific issues.*

18 (3) *Effects of the proposed decision on the entire State Plan of*
19 *Flood Control.*

20 (4) *Effects of reasonably projected future events, including but*
21 *not limited to, changes in hydrology, climate, and development*
22 *within the applicable watershed.*

23 SEC. 18. *Article 8 (commencing with Section 8725) is added*
24 *to Chapter 3 of Part 4 of Division 5 of the Water Code, to read:*
25

26 *Article 8. State Plan of Flood Control*
27

28 8725. (a) *On or before December 31, 2008, the department*
29 *shall prepare a preliminary report on the status of the State Plan*
30 *of Flood Control and submit the preliminary report to the board*
31 *for its adoption in accordance with this section.*

32 (b) *On or before December 31, 2007, the department shall*
33 *provide a report to the Governor and Legislature on its progress*
34 *toward meeting the requirements of subdivision (a).*

35 (c) *For the purposes of preparing the preliminary report, the*
36 *department shall inspect the project levees. The preliminary*
37 *report shall include all of the following:*

38 (1) *A description and the location of all facilities of the State*
39 *Plan of Flood Control, including, but not limited to, levees,*
40 *canals, weirs, bypasses, and pumps. The description shall*

1 include the identification of the agency responsible for
2 maintaining the facility.

3 (2) An evaluation of the performance and deficiencies of
4 project levees and other facilities of the State Plan of Flood
5 Control.

6 (3) A prioritized list of actions necessary to improve the
7 performance of, and to the maximum extent practicable, to
8 eliminate deficiencies of, project levees and other facilities of the
9 State Plan of Flood Control, using the following criteria for
10 establishing its priority list:

11 (A) The likelihood of failure by the levee or facility.

12 (B) The current population protected by the levee or facility.

13 (C) The public safety infrastructure protected by the levee or
14 facility. For purposes of this subparagraph, “public safety
15 infrastructure” means the street and highway evacuation routes,
16 hospitals, and other public safety infrastructure necessary to
17 respond to a flood emergency.

18 (4) An examination of both structural and nonstructural
19 methods for improving the performance and eliminating
20 deficiencies of project levees and other facilities of the State Plan
21 of Flood Control, and, wherever feasible, a description of actions
22 intended to meet multiple objectives, including each of the
23 following:

24 (A) Reducing the risk to human life, health, and safety from
25 flooding.

26 (B) Promoting natural dynamic hydrologic and geomorphic
27 processes.

28 (C) Reducing damages from flooding.

29 (D) Increasing and improving the quantity, diversity, and
30 connectivity of riparian, wetland, floodplain, and shaded riverine
31 aquatic habitats, including agriculture and the ecological values
32 of these lands.

33 (E) Minimizing the flood management system operation and
34 maintenance requirements.

35 (F) Promoting the recovery and stability of native species
36 populations and overall biotic community diversity.

37 (5) A description of the historical development of the State
38 Plan of Flood Control.

39 (6) A description of the roles and responsibilities of federal,
40 state, and local agencies.

1 (7) A description of all other relevant projects, programs,
2 activities and policies that are a material component of the State
3 Plan of Flood Control.

4 (8) An examination to determine if the listing of facilities in
5 Section 8361 is properly inclusive or if additions or deletions are
6 appropriate, together with any revisions of roles and
7 responsibilities.

8 (d) On or before December 31, 2009, the board shall adopt
9 and submit to the Governor and the Legislature a final report
10 that includes any changes that it determines to be necessary
11 based on the public comments received pursuant to subdivision
12 (e).

13 (e) (1) The board shall conduct at least two public meetings to
14 consider public comments prior to adopting the report. At least
15 one meeting shall be conducted at a location in the Sacramento
16 Valley and at least one meeting shall be conducted at a location
17 in the San Joaquin Valley or the Sacramento-San Joaquin Delta
18 as described in Section 12220.

19 (2) The board shall publish the department's preliminary
20 report prepared pursuant to subdivision (a) on its Internet Web
21 site at least 30 days before the date of the first public meeting
22 required by paragraph (1).

23 (3) To the extent feasible, the board shall provide outreach to
24 disadvantaged communities to promote access and participation
25 in the meetings.

26 (f) The department shall assist the board in developing the
27 necessary information that responds to public comments for
28 inclusion in the final report.

29 (g) It is the intent of the Legislature that the report to the
30 Governor and Legislature on the status of the state flood control
31 system become the basis for developing and implementing one or
32 more natural communities conservation plans or joint natural
33 communities conservation plan/habitat conservation plans for
34 flood management projects.

35 8726. (a) On or before December 31, 2009, the board shall
36 prepare and adopt a strategic flood protection plan, consistent
37 with Section 8725. The board shall make relevant maps available
38 to the public and shall post these maps on its Internet Web site.

1 (b) The board shall establish and update, at a minimum, every
2 five years, standards for levee construction, operation, and
3 maintenance.

4 (c) The board shall review and comment on local and regional
5 land use plans regarding their compliance with flood protection
6 and public safety standards adopted by the board.

7 (d) The board shall review flood control plans adopted by
8 local public agencies regarding the adequacy of those plans to
9 protect public safety. The board may recommend revisions to
10 those plans to improve public safety protection.

11 (e) The board shall not allocate any funds to a local public
12 agency for a flood control project unless the board determines
13 that the project ensures adequate flood protection consistent with
14 existing state and federal law.

15 8727. (a) (1) A local agency that is responsible for
16 maintaining a unit or portion of the State Plan of Flood Control,
17 at a public hearing of the local agency, upon approval of the
18 board, may submit a petition to the board and the United States
19 for decertification of the flood control facility as a part of the
20 State Plan of Flood Control.

21 (2) Not less than 90 days before the proposed submittal of the
22 petition, the local agency shall provide notice to the department,
23 the board, any affected county, any affected city, and any affected
24 levee district. The notice shall specify the reasons for the
25 proposed decertification and the local agency's plan for the levee
26 if the decertification is approved.

27 (3) The board may approve the submittal of the petition at a
28 public hearing if the county board of supervisors of any county,
29 and the city council of any city that receives protection from the
30 levee provides written approval for the submittal of the petition.

31 (b) The board may approve a petition for decertification
32 submitted in accordance with subdivision (a) if it determines that
33 other levees will not be adversely affected and that other
34 elements of the State Plan of Flood Control will not be adversely
35 affected, and that it is in the best interest of the state.

36 (c) The decertification shall be effective upon the approval of
37 the decertification by the board and the United States.